

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Goodfried, et al Confirmation No.: 2235
 Serial No. : 10/817051
 Filed : 04/02/2004
 Title : Modular Implant System with Fully Porous Coated Sleeve
 Art Unit : 3775
 Examiner : Anaradha Ramana

Mail Stop Patent Ext.
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

CERTIFICATE OF TRANSMISSION			
I hereby certify that this correspondence is being electronically filed via EFS-Web to the Commissioner for Patents with the U.S. Patent and Trademark Office on: May 18, 2010			
Name (print/type)	Stephen J. Manich		
Signature	/Stephen J. Manich/	Date	05/18/2010

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**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
 UNDER 37 C.F.R. 1.705(b) WITHIN THREE MONTHS OF RECEIPT OF THE
 NOTICE OF ALLOWANCE**

Dear Sir:

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) and provided with the Notice of Allowance (February 23, 2010), and in light of the recent ruling in *Wyeth v. Dudas*, No. 2009-1120, slip op. (Court of Appeals for the Federal Circuit) the Applicants submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705. As stated in 37 C.F.R. 1.705(b):

Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b)

must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance.

This request is being submitted before payment of the issue fee (due May 24, 2010), and complies with the relevant deadline specified in 37 C.F.R. 1.705. Thus, Applicants contend this request is timely.

Applicants submit that, due to an incorrect PTA calculation under 37 C.F.R. 1.1702(a) and the recent *Wyeth* decision, the correct Patent Term Adjustment should be at least an additional 592 days. The final number is dependent on when the patent issues in the captioned application. Applicants, therefore, request that the allowed application be granted an additional patent term of 824 days plus any additional days should the USPTO take longer than four months to issue the patent.

1. USPTO “A Delay” Calculation

Applicants agree with the USPTO’s initial determination, which, for purposes of this request and in keeping with the explanation provided in *Wyeth*, Applicants will refer to as the “A delay.” In the “A delay” the Patent Office delayed prosecution by issuing the first communication 14 months plus 663 days after the filing of the application (37 CFR 1.703(a)(1)).

These delays result in an “A delay” patent term adjustment of 663 days.

2. “B Delay” Calculation Must be Added to the “A Delay” Calculation

This application has yet to issue as a U.S. Patent and an RCE was filed on October 3, 2008, ending the “B” time. The Patent Office however has **not** included in the Patent Term Adjustment the days related to the “B delay,” which are the days delay resulting from an application pending longer than three years. According to 37 C.F.R. 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued...

The instant application was filed on April 2, 2004 and is still pending. The *Wyeth* decision states that “the ‘A period’ and ‘B period’ overlap only if they occur on the same calendar day or days” (*Wyeth*, No. 07-1492, slip op. at 8).

Thus, according to the *Wyeth* decision, Applicants are entitled to both the “A delay” of 663 days (beginning on April 2, 2004 and ending on March 27, 2007 and the “B delay” of at least 549 days (beginning on April 2, 2007 to October 3, 2008 plus any delay in the issuance of the patent) minus any overlap which occurs on the same calendar days, and minus any Applicant delay (388 days).

According to the PAIR information, and the above dates, provided that the patent issues within four months of the payment of the issue fee, there is no overlap of calendar days between the “A delay” (663 days) and the “B delay” (at least 549 days). Thus, the total Patent Term Adjustment due to both the “A” and “B” delays and minus any Applicant delay is at least 824 days ($663 + 549 - 388 = 824$) as of the submission date of this Petition.

For these reasons, the Patent Term Adjustment for this case should be at least 824 days.

Any patent issuing from the captioned application will not be subject to a terminal disclaimer.

In light of the foregoing, the Applicants respectfully request that the patent term adjustment be at least 824 days. If a telephone conference would expedite the prosecution of this Request for Reconsideration of Patent Term Adjustment, please contact the undersigned agent as indicated below.

Respectfully submitted,

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May 18, 2010

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